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82-2343

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## REMARKS

John: This is the paper I mentioned this morning re EEO-OT.

Incidentally, we have already talked with Dohring on the Handicap program. We agreed to talk about it again when he has his feet more squarely set.

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

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# STAFF STUDY ON ORGANIZATIONAL PLACEMENT OF THE OFFICE OF EEO

82-2343

## I. Purpose

To set forth considerations on the separation of the Office of Equal Employment Opportunity (OEEO) from the Office of Personnel Policy, Planning, and Management (OPPPM).

## II. Background

As a consequence of the Civil Rights Act of 1964 (from which the Central Intelligence Agency is not exempt as regards the statutes pertaining to Equal Employment Opportunity) and Executive Order No. 11478 of 8 August 1969 (appended as Attachment I), the CIA formed the OEEO in 1975 as a separate office within the DCI area, reporting directly to the Director of Central Intelligence (DCI). The position of this Office in the Agency structure is also in accordance with FPM Supplement 990-1 (see Attachment II), dated 20 July 1978, which states that "The Director of Equal Employment Opportunity shall be under the immediate supervision of the head of his agency..."

## III. Reasons for Keeping the OEEO Separate From OPPPM

There are many reasons that suggest that the OEEO should remain separate from OPPPM. The advantages to the OEEO of this separation are:

- A. Power -- there is less hierarchical structure between the Director of Equal Employment Opportunity (D/EEO) and the DCI.
- B. A forum -- there is closer contact with, and membership on, the Executive Committee (ExCom), permitting greater awareness, on the part of the OEEO, of ExCom concerns and, on the part of the ExCom, of EEO concerns.
- C. Independence -- there are fewer people and interests to serve, resulting in more time to pursue EEO matters.
- D. The ability to direct personnel policies with regard to EEO -- instead of EEO policies being directed by OPPPM, as would be the case if the D/EEO were supervised by the D/PPPM.
- E. Impact -- an OEEO can have a greater impact on the Office of Training and Education (OTE) with relation to courses; on components, with relation to hiring and promotions; and on the Office of Logistics (OL), with relation to handicapped needs.

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- F. Clout -- the D/EEO, as Director of an Office, has more force in objecting to such things as the OPPPM Applicant Review unit not having to give statistics.
- G. Ability to assign senior personnel -- the CEEEO has the charter and funds to place senior personnel in OEEEO positions dealing with women, blacks, and other minorities. The D/EEO has supported the CEEEO structure which would allow him to make these assignments, stating: "This structure is based on experience and estimates of the Office's work requirements and responsibilities.... The Office of Equal Employment Opportunity has matured and is now able to more precisely define its role in the Agency. The OEEEO is also therefore more aware of the quantity and quality of resources necessary to accomplish Agency EEO-related goals."
- H. Influence -- the General Accounting Office (GAO) has criticized agencies not having separate EEO and personnel offices because of a feeling on the part of employees that they were getting short shrift on EEO matters.
- I. Conformity with the executive branch of the Government -- the Equal Employment Opportunity Commission (EEOC) and the Office of Personnel Management (OPM) are separate independent establishments, both reporting directly to the President. The D/EEO himself, in a 22 August 1977 Memorandum for the DCI entitled "First Report on the Office of Equal Employment Opportunity", affirmed this separation as it applies to the Agency.

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#### IV. Reasons for Placing EEO Under the Supervision of the D/PPPM

There are also several reasons, however, that would suggest that instead of two separate offices, the CEEEO should be placed under the supervision of the D/PPPM. These are:

- A. Unanimity of purpose -- the D/EEO, in a Memorandum for the DCI and DDCI on "The Organization, Position and Structure of the Personnel Management of the Central Intelligence Agency", stated that there should be "one senior Agency officer responsible for the execution of DCI personnel policy to be held accountable for the quality and practice of human resources management throughout the Agency." He further stated that by placing this officer "directly under the DCI... it is conceivable that some small saving in personnel could be accomplished, while doing the job more efficiently than now,... by combining related services of the Agency under this one entity." He then suggested that this entity include "the current personnel support organizations and procedures,... all the policy and enforcement

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elements of the current Office of Personnel and such additional responsibilities and entities as would be determined necessary by the DCI/DDCI,... responsibility for introducing and monitoring career development procedures, Upward Mobility, FUSF, etc., servicing employee welfare concerns and morale."

- B. Precedent -- With its handicapped program, CPPPMM is already responsible for one EEO concern.
- C. Current lack of EEO representation in EEO matters -- at present, there is no EEO representation in CPPPMM's Selective Placement Program for the handicapped; nor is there any EEO representation on the Agency Handicapped Advisory Board, on which the D/PPPMM sits.
- D. Improved communication -- the OEEO would have an earlier input into the functions of the Applicant Review unit, giving the D/EEO the ability to ensure that EEO needs are satisfied from the outset.

V. Position of Similar Offices in the Rest of the Government

- A. As in CIA, the office responsible for EEO in most of the other agencies of the Federal Government is separate from that responsible for personnel. This is true, for example, in the Departments of Agriculture, Commerce, Defense, Energy, Health and Human Services, Interior, Labor, State, Transportation, and Treasury.
- B. In the Library of Congress, in fact, the Affirmative Action Program, which was once in the Office of Personnel, was transferred from that Office to the Office of the Librarian in 1976; and the Equal Opportunity Office (under the Special Assistant for Personnel Management), which is responsible for counseling, investigations, and complaint processing, is also in the Office of the Librarian. (The Placement and Classification Division, however, which is responsible for recruitment and Upward Mobility, is under the Office of Personnel.)

VI. Recommendations

- A. That the current structure in the Agency be retained -- that is, that there be a separate Office of Equal Employment Opportunity and Office of Personnel Policy, Planning, and Management, both reporting directly to the DCI.
- B. That the Handicapped Program be moved from CPPPMM to the OEEO in order to consolidate all EEO concerns within one organizational unit.

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It has long been the policy of the United States Government to provide equal opportunity in Federal employment on the basis of merit and fitness and without discrimination because of race, color, religion, sex, or national origin. All recent Presidents have fully supported this policy, and have directed department and agency heads to adopt measures to make it a reality.

As a result, much has been accomplished through positive agency programs to assure equality of opportunity. Additional steps, however, are called for in order to strengthen and assure fully equal employment opportunity in the Federal Government.

NOW, THEREFORE, under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

SECTION 1. It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a continuing affirmative program in each executive department and agency. This policy of equal opportunity applies to and must be an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of civilian employees of the Federal Government.

SEC. 2. The head of each executive department and agency shall establish and maintain an affirmative program of equal employment opportunity for all civilian employees and applicants for employment within his jurisdiction in accordance with the policy set forth in section 1. It is the responsibility of each department and agency head, to the maximum extent possible, to provide sufficient resources to administer such a program in a positive and effective manner; assure that recruitment activities reach all sources of job candidates; utilize to the fullest extent the present skills of each employee; provide to the maximum feasible opportunity to employees to enhance their skills so they may perform at their highest potential and advance in accordance with their abilities; provide training and advice to managers and supervisors to assure their understanding and implementation of the policy expressed in this Order; assure participation at the local level with other employers, schools, and public or private groups in cooperative efforts to improve community conditions which affect employability; and provide for a system within the department or agency for periodically evaluating the effectiveness with which the policy of this Order is being carried out.

SEC. 3. The Civil Service Commission shall provide leadership and guidance to departments and agencies in the conduct of equal employment opportunity programs for the civilian employees of and applicants for employment within the executive departments and agencies in order to assure that personnel operations in Government departments and agencies carry out the objective of equal opportunity for all persons. The Commission shall review and evaluate agency program operations periodically, obtain such reports from departments and agencies as it deems necessary, and report to the President as appropriate on overall progress. The Commission will consult from time

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to time with such individuals, groups, or organizations as may be of assistance in improving the Federal program and realizing the objectives of this Order.

SEC. 4. The Civil Service Commission shall provide for the prompt, fair, and impartial consideration of all complaints of discrimination in Federal employment on the basis of race, color, religion, sex, or national origin. Agency systems shall provide access to counseling for employees who feel aggrieved and shall encourage the resolution of employee problems on an informal basis. Procedures for the consideration of complaints shall include, at least one impartial review within the executive department or agency and shall provide for appeal to the Civil Service Commission.

SEC. 5. The Civil Service Commission shall issue such regulations, orders, and instructions as it deems necessary and appropriate to carry out this Order and assure that the executive branch of the Government leads the way as an equal opportunity employer, and the head of each executive department and agency shall comply with the regulations, orders, and instructions issued by the Commission under this Order.

SEC. 6. This Order applies (a) to military departments as defined in section 102 of title 5, United States Code, and executive agencies (other than the General Accounting Office) as defined in section 105 of title 5, United States Code, and to the employees thereof (including employees paid from nonappropriated funds), and (b) to those portions of the legislative and judicial branches of the Federal Government and of the Government of the District of Columbia having positions in the competitive service and to the employees in those positions. This Order does not apply to aliens employed outside the limits of the United States.

SEC. 7. Part I of Executive Order No. 11246 of September 24, 1965, and those parts of Executive Order No. 11375 of October 13, 1967, which apply to Federal employment, are hereby superseded.

SEC. 8. This Order shall be applicable to the United States Postal Service and to the Postal Rate Commission established by the Postal Reorganization Act of 1970.

[Sec. 8 added by EO 11590 of Apr. 23, 1971, 36 FR 7831, 3 CFR, 1971-1975 Comp., p. 552]

## Part 713

## Equal Opportunity

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- 713.241 Reports to the Commission on complaints

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*Freedom From Reprisal or Interference*

- 713.261 Freedom from reprisal  
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- Sec.  
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*Right To File a Civil Action*

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## SUBPART C. MINORITY GROUP STATISTICS SYSTEM,

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## SUBPART D. EQUAL OPPORTUNITY WITHOUT REGARD TO POLITICS OR MARITAL STATUS

- 713.401 Equal opportunity without regard to politics or marital status

## SUBPART E. NONDISCRIMINATION ON ACCOUNT OF AGE

*General Provisions*

- Sec.  
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## SUBPART F. CLASS COMPLAINTS OF DISCRIMINATION

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- 713.610 Hearing
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#### *Appeal to the Commission*

- 713.631 Appeal to the Appeals Review Board.
- 713.632 Reopening and reconsideration by the Commissioners.

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- 713.641 Statutory right.
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### **SUBPART G. PROHIBITION AGAINST DISCRIMINATION BECAUSE OF A PHYSICAL OR MENTAL HANDICAP**

#### *General Provisions*

- 713.701 Purpose and applicability
- 713.702 Definitions
- 713.703 General policy
- 713.704 Reasonable accommodation
- 713.705 Employment criteria
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#### *Agency Regulations for Processing Complaints of Discrimination*

- 713.708 General
- 713.709 Coverage
- 713.710 Exclusions

**AUTHORITY:** The provisions of this Part 713 issued under 5 U.S.C. sections 1301, 3301, 3302, 7301; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218; E.O. 11222, 3 CFR 1964-1965 Comp., p. 396; E.O. 11478, 3 CFR 1969 Comp., p. 133; 42 U.S.C. 2000e-16(b), unless otherwise noted. \*Subpart G issued under 5 U.S.C. 7153; section 5.1 of the Civil Service Rules; 29 U.S.C. 791.

### **SUBPART A. [RESERVED]**

### **SUBPART B. EQUAL OPPORTUNITY WITHOUT REGARD TO RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN**

#### *General Provisions*

**Sec. 713.201 Purpose and applicability.** (a) *Purpose.* This subpart sets forth the regulations under which an agency shall establish a continuing affirmative program for equal opportunity in employment and personnel operations without regard to race, color, religion, sex, or national origin and under which the Commission

will review an agency's program and entertain an appeal from a person dissatisfied with an agency's decision or other final action on his complaint of discrimination on grounds of race, color, religion, sex, or national origin.

(b) *Applicability.* (1) This subpart applies (i) to military department as defined in section 102 of title 5, United States Code, executive agencies (other than the General Accounting Office) as defined in section 105 of title 5, United States Code, the United States Postal Service, and the Postal Rate Commission, and to the employees thereof, including employees paid from nonappropriated funds, and (ii) to those portions of the legislative and judicial branches of the Federal Government and the government of the District of Columbia having positions in the competitive service and to the employees in those positions.

(2) This subpart does not apply to aliens employed outside the limits of the United States.

**Sec. 713.202 General policy.** It is the policy of the Government of the United States and of the government of the District of Columbia to provide equal opportunity in employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a continuing affirmative program in each agency.

**Sec. 713.203 Agency program.** The head of each agency shall exercise personal leadership in establishing, maintaining, and carrying out a continuing affirmative program designed to promote equal opportunity in every aspect of agency personnel policy and practice in the employment, development, advancement, and treatment of employees. Under the terms of its program, an agency shall:

(a) Provide sufficient resources to administer its equal employment opportunity program in a positive and effective manner and assure that the principal and operating officials responsible for carrying out the equal employment opportunity program meet established qualifications requirements;

(b) Conduct a continuing campaign to eradicate every form of prejudice or discrimination

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based upon race, color, religion, sex, or national origin, from the agency's personnel policies and practices and working conditions, including disciplinary action against employees who engage in discriminatory practices;

(c) Utilize to the fullest extent the present skills of employees by all means, including the redesigning of jobs where feasible so that tasks not requiring the full utilization of skills of incumbents are concentrated in jobs with lower skill requirements;

(d) Provide the maximum feasible opportunity to employees to enhance their skills through on-the-job training, work-study programs, and other training measures so that they may perform at their highest potential and advance in accordance with their abilities;

(e) Communicate the agency's equal employment opportunity policy and program and its employment needs to all sources of job candidates without regard to race, color, religion, sex, or national origin, and solicit their recruitment assistance on a continuing basis;

(f) Participate at the community level with other employers, with schools and universities, and with other public and private groups in cooperative action to improve employment opportunities and community conditions that affect employability;

(g) Review, evaluate, and control managerial and supervisory performance in such a manner as to insure a continuing affirmative application and vigorous enforcement of the policy of equal opportunity, and provide orientation, training, and advice to managers and supervisors to assure their understanding and implementation of the equal employment opportunity policy and program;

(h) Provide recognition to employees, supervisors, managers, and units demonstrating superior accomplishment in equal employment opportunity;

(i) Inform its employees and recognized labor organizations of the affirmative equal employment opportunity policy and program and enlist their cooperation;

(j) Provide for counseling employees and applicants who believe they have been discriminated against because of race, color,

religion, sex, or national origin and for resolving informally the matters raised by them;

(k) Provide for the prompt, fair, and impartial consideration and disposition of complaints involving issues of discrimination on grounds of race, color, religion, sex, or national origin; and

(l) Establish a system for periodically evaluating the effectiveness of the agency's overall equal employment opportunity effort.

Sec. 713.204 Implementation of agency program. To implement the program established under this subpart, an agency shall:

(a) Develop the plans, procedures, and regulations necessary to carry out its program established under this subpart;

(b) Appraise its personnel operations at regular intervals to assure their conformity with the policy in section 713.202 and its program established in accordance with section 713.203;

(c) Designate a Director of Equal Employment Opportunity and as many Equal Employment Opportunity Officers, Equal Employment Opportunity Counselors, Federal Women's Program Coordinators, and other persons as may be necessary, to assist the head of the agency to carry out the functions described in this subpart in all organizational units and locations of the agency. The functioning and the qualifications of the persons so designated shall be subject to review by the Commission. The Director of Equal Employment Opportunity shall be under the immediate supervision of the head of his agency, and shall be given the authority necessary to enable him to carry out his responsibilities under the regulations in this subpart;

(d) Assign to the Director of Equal Employment Opportunity the functions of:

(1) Advising the head of his agency with respect to the preparation of national and regional equal employment opportunity plans, procedures, regulations, reports, and other matters pertaining to the policy in section 713.202 and the agency program required to be established under section 713.203;

(2) Evaluating from time to time the sufficiency of the total agency program for equal employment opportunity and reporting thereon to the head of the agency with recom-



mandations as to any improvement or correction needed, including remedial or disciplinary action with respect to managerial or supervisory employees who have failed in their responsibilities:

(3) When authorized by the head of the agency, making changes in programs and procedures designed to eliminate discriminatory practices and improve the agency's program for equal employment opportunity;

(4) Providing for counseling, by an Equal Employment Opportunity Counselor, of any aggrieved employee or applicant for employment who believes that he has been discriminated against because of race, color, religion, sex, or national origin and for attempting to resolve on an informal basis the matter raised by the employee or applicant before a complaint of discrimination may be filed under section 713.214;

(5) Providing for the receipt and investigation of individual complaints of discrimination in personnel matters within the agency, subject to sections 713.211 through 713.223;

(6) Providing for the acceptance and processing and/or rejection of class complaints in accordance with Subpart F of this part;

(7) When authorized by the head of the agency, making the decision under section 713.221 for the head of the agency on complaints of discrimination and ordering such corrective measures as he may consider necessary, including the recommendation for such disciplinary action as is warranted by the circumstances when an employee has been found to have engaged in a discriminatory practice; and

(8) When not authorized to make the decision for the head of the agency on complaints of discrimination, reviewing, at his discretion, the record on any complaint before the decision is made under section 713.221 and making such recommendations to the head of the agency or his designee as he considers desirable, including the recommendation for such disciplinary action as is warranted by the circumstances when an employee is found to have engaged in a discriminatory practice;

(c) Insure that equal opportunity for women is an integral part of the agency's overall program by assigning to the Federal Women's Program Coordinators the function of advising

the Director of Equal Employment Opportunity on matters affecting the employment and advancement of women;

(f) Publicize to its employees and post permanently on official bulletin boards:

(1) The names and addresses of the Director of Equal Employment Opportunity and the Federal Women's Program Coordinators;

(2) The name and address of the appropriate Equal Employment Opportunity Officer;

(3) The name and address of the Equal Employment Opportunity Counselor and the organizational units he serves; his availability to counsel an employee or applicant for employment who believes that he has been discriminated against because of race, color, religion, sex, or national origin; and the requirement that an employee or applicant for employment must consult the Counselor as provided by section 713.213 about his allegation of discrimination because of race, color, religion, sex, or national origin before a complaint as provided by section 713.214 may be filed; and

(4) Time limits for contacting an Equal Employment Opportunity Counselor;

(g) Make reasonable accommodations to the religious needs of applicants and employees, including the needs of those who observe the Sabbath on other than Sunday, when those accommodations can be made (by substitution of another qualified employee, by a grant of leave, a change of a tour of duty, or other means) without undue hardship on the business of the agency. If an agency cannot accommodate an employee or applicant, it has a duty in a complaint arising under this subpart to demonstrate its inability to do so;

(h) Make readily available to its employees a copy of its regulations issued to carry out its program of equal employment opportunity; and

(i) Submit annually for the review and approval of the Commission written national and regional equal employment opportunity plans of action. Plans shall be submitted in a format prescribed by the Commission and shall include, but not be limited to—

(1) Provision for the establishment of training and education programs designed to provide maximum opportunity for employees to

advance so as to perform at their highest potential;

(2) Description of the qualifications, in terms of training and experience relating to equal employment opportunity, of the principal and operating officials concerned with administration of the agency's equal employment opportunity program; and

(3) Description of the allocation of personnel and resources proposed by the agency to carry out its equal employment opportunity program.

Sec. 713.205 Commission review and evaluation of agency program operations. The Commission shall review and evaluate agency program operations periodically, obtain such reports as it deems necessary, and report to the President as appropriate on overall progress. When it finds that an agency's program operations are not in conformity with the policy set forth in section 713.202 and the regulations in this subpart, the Commission shall require improvement or corrective action to bring the agency's program operations into conformity with this policy and the regulations in this subpart. The head of each department and agency shall comply with the rules, regulations, orders, and instructions issued by the Commission.

#### *Agency Regulations for Processing Complaints of Discrimination*

Sec. 713.211 General. An agency shall ensure that its regulations governing the processing of complaints of discrimination on grounds of race, color, religion, sex, or national origin comply with the principles and requirements in sections 713.212 through 713.222.

Sec. 713.212 Coverage. (a) The agency shall provide in its regulations for the acceptance of a complaint from any aggrieved employee or applicant for employment with that agency who believes that he has been discriminated against because of race, color, religion, sex, or national origin. A complaint may also be filed by an organization for the aggrieved person with his consent.

(b) The agency shall provide in its regulations for the acceptance of class complaints in accordance with subpart F.

Sec. 713.213 Precomplaint processing. (a) An agency shall require that an aggrieved person who believes that he has been discriminated against because of race, color, religion, sex, or national origin consult with an Equal Employment Opportunity Counselor when he wishes to resolve the matter. The agency shall require the Equal Employment Opportunity Counselor to make whatever inquiry he believes necessary into the matter; to seek a solution of the matter on an informal basis; to counsel the aggrieved person concerning the issues in the matter; to keep a record of his counseling activities so as to brief, periodically, the Equal Employment Opportunity Officer on those activities; and, when advised that a complaint of discrimination has been accepted from an aggrieved person, to submit a written report to the Equal Employment Opportunity Officer, with a copy to the aggrieved person, summarizing his actions and advice both to the agency and the aggrieved person concerning the issues in the matter. The Equal Employment Opportunity Counselor shall, insofar as is practicable, conduct his final interview with the aggrieved person not later than 21 calendar days after the date on which the matter was called to his attention by the aggrieved person. If the final interview is not concluded within 21 days and the matter has not previously been resolved to the satisfaction of the aggrieved person, the aggrieved person shall be informed in writing at that time of his right to file a complaint of discrimination. The notice shall inform the complainant of his right to file a complaint at any time after receipt of the notice up to 15 calendar days after the final interview (which shall be so identified in writing by the Equal Employment Opportunity Counselor) and the appropriate official with whom to file a complaint. The Counselor shall not attempt in any way to restrain the aggrieved person from filing a complaint. The Equal Employment Opportunity Counselor shall not reveal the identity of an aggrieved person who has come to him for consultation, except when authorized to do so by the aggrieved person, until the agency has accepted a complaint of discrimination from him.